

# Summaries with Trial Analysis

## **\$8,000,000 RECOVERY – CONSTRUCTION SITE ACCIDENT– SPINAL CORD COMPRESSION – PERMANENT PARAPLEGIA – OPEN DEGLOVING WOUND – NEUROGENIC BLADDER AND BOWEL DYSFUNCTION.**

### **Philadelphia County**

This action arose when the plaintiff, in the course and scope of his employment with a framing subcontractor, fell 18' while installing lateral bracing on a house under construction. The defendants in the case included the property owner (who was also the developer and general contractor at the site) as well as the framing contractor that subcontracted the plaintiff's employer for the job. The plaintiff claimed the defendants negligently failed to provide adequate fall protection to prevent the plaintiff's injuries. The defendants maintained that the plaintiff's employer was responsible for providing fall protection for its workers. The defense also asserted that the plaintiff failed to follow the framing specifications for construction of the house and should not have been working at the location from which he fell.

The plaintiff was a 33-year-old, Portuguese-speaking Brazilian and was employed as a framer on a residential single-family home subdivision. The site was owned and developed by the defendant property owner. The defendant property owner had subcontracted the rough carpentry and framing to the co-defendant framing contractor which, in turn, subcontracted its work to the plaintiff's employer.

On March 22, 2003, the plaintiff was installing permanent lateral bracing on the bottom chords of the trusses above the second floor foyer of a house under construction. The plaintiff, his brother and another co-worker had been framing the first house at this development for approximately a week before the accident.

The plaintiff was standing on the bottom chord trusses which were approximately 1.5 inches wide, spaced 24 inches on center at a height of 18' above the foyer. The plaintiff was installing 1" x 6" lateral bracing to the trusses to stabilize them and allow them to be "tied in" to the roof structure.

The plaintiff was working in an unguarded, unprotected area. In the process of installing the lateral braces, the plaintiff's left foot slipped and he fell between two trusses and plummeted 18' to the floor of the foyer below.

The plaintiff claimed that the fall resulted from the defendants' failure to provide adequate fall protection at an unprotected height in excess of 6'. Although the defendant property owner performed an investigation into the accident two days after the fall, the plaintiff claimed the defendant did not prepare an incident or accident report as was required under its own safety program. The plaintiff also claimed that the defendant failed to report the accident to OSHA as required.

As a result of the fall, the plaintiff was diagnosed with a T-11 burst fracture, spinal cord compression causing paraplegia at T-6, compression fractures at the T-8 through T-12 levels, comminuted fracture of the distal radius, an open degloving wound of the forehead and scalp, mild traumatic brain injury, neurogenic bladder and bowel dysfunction, chronic pain syndrome, adjustment disorder, bilateral sensorineural hearing loss and tinnitus.

The plaintiff sought \$597,512 in past medical expenses and \$4,356,129 for his future life care.

The defendants took the position that, since the plaintiff's employer was an independent contractor, it was responsible for its own manner and methods of performing the framing work for which it was contracted. The defendants contended that they did not direct, control, supervise nor dictate the method by which the plaintiff was performing his work and that any responsibility for the site's safety rested entirely with plaintiff and his employer.

The defendants further claimed that there was no need for the plaintiff to install braces for the roof trusses above the foyer area, if he had followed the drawings and specifications provided. The defense claimed that the plans called for the lateral truss braces to be installed in the second floor above the hallway that ran the width of the house. The defendants argued that the lateral truss braces should have been safely installed from an "A" frame ladder which would have kept the plaintiff below a six' working elevation.

The defendants also asserted that the plaintiff's employer was responsible for providing all safety equipment and safety training for the plaintiff to safely

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Published by Jury Verdict Review Publications, Inc. 45 Springfield Avenue, Springfield, NJ 07081  
 www.jvra.com

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Circulation & Billing Department:  
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**Pennsylvania Jury Verdict Review & Analysis** (ISSN 8750-8052) is published monthly at the subscription rate of \$295/year by Jury Verdict Review Publications, Inc., 45 Springfield Avenue, Springfield, NJ 07081. Periodical postage paid at Springfield, NJ and at additional mailing offices.

**Postmaster:** Send address changes to: Pennsylvania Jury Verdict Review & Analysis, 45 Springfield Avenue, Springfield, NJ 07081.

perform his job. By plaintiff's own admission, his employer did not provide him with any safety equipment or safety training.

The case was settled for a global settlement of \$8 million on the seventh day of trial.

**REFERENCE**

**Plaintiff's construction expert:** Stephen Estrin from Sarasota, FL. **Plaintiff's rehabilitation expert:** Guy Fried from Philadelphia, PA. **Plaintiff's psychiatrist:** Burton Weiss from Philadelphia, PA. **Plaintiff's reconstructive surgeon:** Benjamin Cooper from Newark, DE. **Plaintiff's neurosurgeon:** Michael Sugerman from Newark, DE. **Plaintiff's otolaryngologist:** Joseph Spiegel from Philadelphia, PA. **Plaintiff's life care planner:** Mona Yudkoff from Bala Cynwyd, PA.

Desouza vs. Defendants. Case no. 05-01-000144; Judge Victor DiNubile, Jr., 2-13-07.

**Attorneys for plaintiff:** Robert Mongeluzzi of Saltz, Mongeluzzi, Barrett & Bendesky in Philadelphia, PA and Richard M. Jurewicz of Galfand Berger, LLP, in Philadelphia, PA.

**COMMENTARY:**

This case was handled as a collaborative effort by two plaintiff's firms. Counsel from one firm, Robert Mongeluzzi, handled the liability phase of the case, with the second firm, represented by Richard M. Jurewicz, handling the damages. The plaintiff called 14 witnesses, including four liability witnesses and 10 damages witnesses (six of them experts).

There were two significant and dramatic events which occurred during the course of the plaintiff's testimony which may have influenced the flow of the case and enabled it to settle on the seventh day of the proceedings.

First, on liability, the defendant property owner's project manager was called by the plaintiff, on cross examination. This witness went through a series of photographs and documents which plaintiff's counsel asserted definitively established that the plaintiff was required to brace above the foyer area of the home under construction. This testimony could have negated one of the main defenses, which centered on the argument that the plaintiff failed to follow the construction specifications, took unnecessary risk and was not required to be in the location from which he fell.

Secondly, the plaintiff's wife provided very compelling testimony in support of the plaintiff's damage claim.

Prior to the wife's testimony, there had been a fire alarm which required the courtroom to be evacuated. Because the elevators were not working at the time, the disabled plaintiff had to be carried out of the courthouse and down the steps to ground level.

During the beginning of the wife's testimony, she explained to the jury how afraid her husband had been during the fire alarm when he realized he had no way to escape from the building without assistance.

This testimony was followed by a dramatic and persuasive 22-minute "Day-In-The-Life" video depicting how the plaintiff wife faithfully cared for her paralyzed husband on a daily basis. The video included such scenes as the wife carrying the plaintiff from his wheel chair into the bathroom to bathe him, helping him with his bowel and bladder program and carrying him into a car.

The dramatic impact left by the wife's testimony was demonstrated by the court allocating \$2 million to the plaintiff wife for her loss of consortium claim upon motion by plaintiff's counsel, once a global settlement had been reached.